

BEFORE THE  
*Federal Communications Commission*  
 WASHINGTON, D.C.

RECEIVED  
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 FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

IN THE MATTER OF:	)	MB DOCKET No. 03-181
	)	
<i>Amendment of 47 C.F.R. §73.202(b)</i>	)	RM-10758
<i>Table of FM Allotments</i>	)	
(Weatherford and Blanchard, OK)	)	
	)	
To: Marlene H. Dortch, Secretary, FCC	)	
ATTN: Assistant Chief, Audio Division	)	

**REPLY COMMENTS OF WRIGHT BROADCASTING SYSTEMS, INC.**

Comes now **WRIGHT BROADCASTING SYSTEMS, INC.** ("Petitioner"), by Counsel and pursuant to Section 1.415 of the Commission's Rules, hereby respectfully submits its Reply Comments in support of the *Notice of Proposed Rule Making*, DA 03-2574 (released August 1, 2003) ("*NPRM*") in the above-captioned rule making proceeding to amend the Table of FM Allotments Section 73.202(b) of the Rules, to change the community of license for KWEY-FM from Weatherford, Oklahoma to Blanchard, Oklahoma and, to change the corresponding channel allotment from Channel 247C1 to Channel 247A. In support whereof and in opposition to the counterproposal of Charles Crawford, the following is shown:

***Timeliness***

1. Pursuant to Section 1.415(c) of the Rules and the NPRM, Petitioner submits these Reply Comments on the date set forth in the NPRM. This Response is necessary due to the Counterproposal of Charles Crawford ("Crawford") filed in this docket.

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2. It will be shown that Crawford's Counterproposal is both procedurally incorrect and more importantly that the Blanchard proposal better serves the public interest than that of Crawford.

### ***Argument - Procedurally Defective***

3. The Counterproposal by Crawford proposes that in lieu of Petitioner changing its community of license from Weatherford, Oklahoma to Blanchard, Oklahoma ("Blanchard"), the Commission should place Channel 247A in Wynnewood, Oklahoma ("Wynnewood") and move vacant allotment Channel 283A from Wynnewood to Elmore City, Oklahoma ("Elmore City"). Crawford indicates that Channel 247A can be moved to Wynnewood and Channel 283A in Wynnewood can be moved to Elmore City. Crawford cites the move can be accomplished since an action at Keller, Texas regarding Channel 248C was dismissed by the Commission.<sup>1</sup> Otherwise, this Keller proceeding (248C) would have blocked his Wynnewood Counterproposal at Channel 247A.

4. Although it is correct that the Keller proceeding was dismissed by the Audio Division, Crawford fails to mention that Petitions for Reconsideration<sup>2</sup> have been filed and that the entire Keller proceeding is still subject to review and reversal. Thus, the *Report and Order* referenced as the Keller proceeding is not yet a "Final Order".

5. Since the Keller proceeding is not a Final Order and is still ongoing, the Counterproposal by Crawford must be considered a contingent proposal to the Keller proceeding. It has been stated many times by the Commission that the Commission will not

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<sup>1</sup>See *Report and Order*, DA 03-1533 (released May 8, 2003) ("Keller proceeding").

<sup>2</sup>It should be noted that the Keller proceeding encompasses many issues, parties, and is very complex.

entertain contingent allotments and, if a contingent proposal is submitted said proposal will be dismissed. (*See, Oxford and New Albany, MS*, 3 FCC Rcd 615 (MMB 1988); *recon.* 3 FCC Rcd 6626 (MMB 1988).

6 In addition to the contingency issue, Crawford has failed to mention and explain the existence of his Petition for Rule Making for Davis, Oklahoma which currently is in the Commission's database showing a filing date of June 6, 2003.<sup>3</sup> This allotment at Davis is for Channel 247A. Crawford's Counterproposal to this Petition is significantly shortspaced and in direct conflict with his own Petition at Davis, Oklahoma. The question which arises is which allotment does Crawford want - Davis or Wynnewood?

7. Since Crawford's Counterproposal is contingent on the ultimate outcome of the Keller proceeding, the Counterproposal must be dismissed. Furthermore, his Counterproposal must be dismissed because of his existing proposal for Davis.<sup>4</sup>

### ***Argument - Community vs. Community***

8. In addition to the procedural defects of the Crawford Counterproposal, the Commission should select Blanchard as the community for the Channel 247A allotment instead of Elmore City. Crawford agrees that the proposal at Blanchard would be its first local service. However, Crawford states that Blanchard is a "well served community receiving 12 FM reception services." (Counterproposal, page 2). Crawford continues to state that Elmore City is an "under served community with only 1 FM reception service." (Counterproposal, page 2).

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<sup>3</sup>The database does not reflect any other action on the Davis Petition.

<sup>4</sup>Attached hereto as **Exhibit 1** is the Davis Petition. (Note that the Davis Petition is based upon the Keller proceeding discussed above).

9. Petitioner concurs with Crawford that Blanchard and Elmore City are communities and that they both would receive first local service. However, Crawford is incorrect as to the status of each location. It is incorrect to state that Elmore City is an “underserved community”. As shown herein in the attached Technical Statement and Study, **Exhibit 2**, Elmore City receives 2 FM Stations and 21 AM Stations providing primary service to that community. Elmore City is thus adequately served and therefore is of equal footing with Blanchard.

10. While each proposal would provide a first local service (“priority 3”) to its respective community, under the FM allotment priorities set forth in *Revision FM Assignment Policies and Procedures*, 90 FCC 2d 80 (1982), the population of Blanchard (2,826 based on 2000 U.S. Census data) substantially exceeds the population of Elmore City (756 based on 2000 U.S. Census data).

11. Since the deciding factor in such cases is the community population, the Blanchard proposal is preferred. See *Revision of FM Assignment Policies and Procedures*, *supra*; *Elberton and Lavonia, Georgia*, 15 FCC Rcd 12571 (2000). In addition, the Blanchard proposal would provide a gain in service for 171,528 persons in and around the community of Blanchard.<sup>5</sup> Using this analysis, Crawford’s Counterproposal must be denied and Petitioner’s Proposal to allot Channel 247A to Blanchard must be granted.

### ***Conclusion***

**WHEREFORE**, the above premises considered, grant of the Petitioner’s Petition is in the public interest since Blanchard would receive first local service. Blanchard also has a

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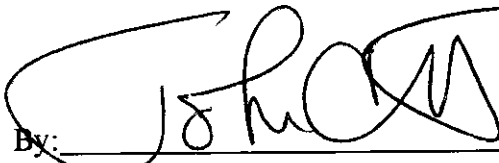
<sup>5</sup>See *NPRM* par. 5.

significantly larger population than that of Elmore City. Further, the Crawford Counterproposal is procedurally defective and must be denied. Petitioner respectfully urges that the Commission GRANT its Petition for Rule Making, and AMEND Section 73.202(b) of the Rules, FM Table of Allotments, as follows:

<i>Community</i>	<i>Present</i>	<i>Proposed</i>
Weatherford, OK	247C1, 286A	286A
Blanchard, OK	-----	247A

Respectfully submitted,

**WRIGHT BROADCASTING SYSTEMS, INC.**

By:   
John C. Trent  
Its Attorney

October 7, 2003

*Putbrese Hunsaker & Trent, P.C.*  
*100 Carpenter Drive, Ste 100*  
*P.O. Box 217*  
*Sterling VA 20167-0217*  
*(703) 437-8400*

## CERTIFICATE OF SERVICE


I, Sharon L. Hinderer, a secretary in the law firm of **Putbrese Hunsaker & Trent, P.C.**, hereby certify that I have on this 7th day of October, 2003, caused to be sent, by United States Mail, postage prepaid, copies of the foregoing, **“Reply Comments of Wright Broadcasting Systems, Inc.”** to the following:

Charles Crawford  
4553 Bordeaux Ave.  
Dallas TX 75205

Gene A. Bechtel  
Law Office of Gene Bechtel  
1050 17<sup>th</sup> Street, N.W., Suite 600  
Washington DC 20036

John Karousos, Assistant Chief  
Audio Division, Media Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington DC 20554

Robert Hayne, Esquire  
Audio Division, Media Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 3-A262  
Washington DC 20554

  
Sharon L. Hinderer

**EXHIBIT 1**  
**(DAVIS PETITION)**

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Federal Communications Commission  
Washington, D.C. 20554

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JUN 6 2003  
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In the Matter of )  
 )  
Amendment of 73.202 (b) ) MB Docket No. \_\_\_\_\_  
Table of Allotments )  
FM Broadcast Stations )  
(Davis, Oklahoma) )

To: John Karousos, Assistant Chief  
Audio Division of the  
Media Bureau

PETITION FOR RULE MAKING

Pursuant to 47 C.F.R. 1.401, Charles Crawford respectfully petitions the FCC to institute a Rule Making proceeding to amend the FM Table of Allotments to add Channel 247A at Davis, Oklahoma.

DISCUSSION

Petitioner respectfully submits that the public interest would be served by allocating Channel 247A to Davis, Oklahoma as that community's first local FM service. Davis, Oklahoma is an incorporated city with a population of 2,800 people. Davis has its own mayor, Richard Mckee, its own post office, fire department, police department, city offices, library, school system and a number of local churches. Davis is a community that is certainly deserving of local FM service. The proposed channel 247A will provide additional diversity and an outlet for local self-expression to Davis residents and therefore is in the public interest.

Attached hereto is a channel study confirming that Channel 247A can be allocated to Davis, Oklahoma, consistent with the FCC's FM separation rules. See revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1992). (See, Attachment A) Note: Channel 248C at Keller, Texas was dismissed by Report & Order, DA 03-1533, released May 8, 2003. (See, Attachment B)

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List A E C D E MB-FM  
03-135



Reference coordinates for Davis, Oklahoma are:

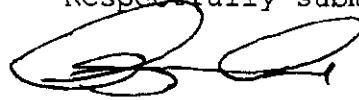
34 30 35 N

97 02 24 W

Should this petition be granted and Channel 247A be allotted to Davis, Oklahoma, Petitioner will apply for Channel 247A at Davis and after it is authorized, will promptly construct the new facility.

The factual information provided in this Petition for Rule Making is correct and true to the best of my knowledge.

Respectfully submitted,



Charles Crawford  
4553 Bordeaux Ave.  
Dallas, Texas 75205  
(214) 520-7077      Tele  
(214) 443-9308      Fax

cc: Gene A. Bechtel, Law Office of Gene Bechtel, Suite 600, 1050 17<sup>th</sup> Street, N.W., Washington, D.C. 20036, telephone (202) 496-1289, telecopier (301) 762-0156, attorney for Charles Crawford. It is requested that the Commission and any parties who may file pleadings in the captioned matter serve copies to Mr. Bechtel as well as Charles Crawford.

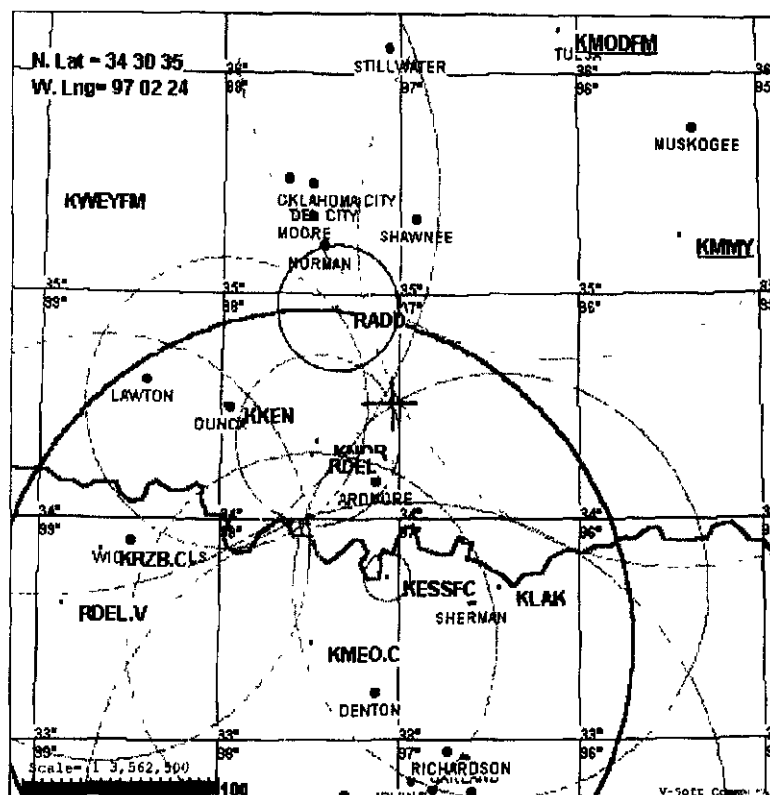
June 5, 2003

Davis

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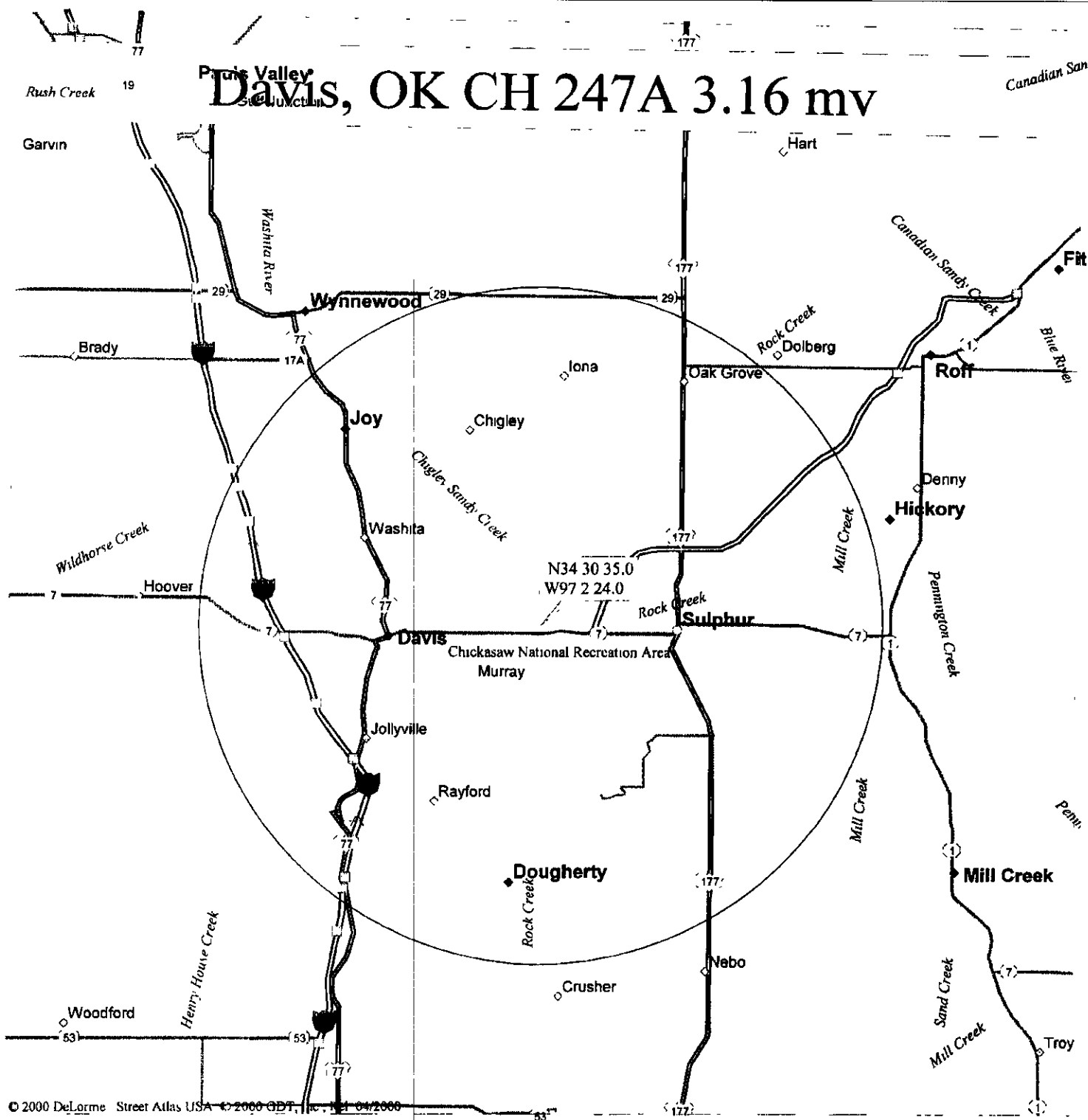
**Attachment A**

FM PROSP<sup>(TM)</sup> LOCATE STUDY CH 247 A 97.3 MHz  
Study



Call	CH#	Type	Location		D-KM	Azi	FCC	Margin
RADD	248C	ADD	Keller	TX	125.89	199.1	165.0	-39.11
RADD	248C	ADD	Keller	TX	125.89	199.1	165.0	-39.11
RDEL	248C2	DEL	Durant	OK	106.11	148.7	106.0	0.11
KLAK	248C2	LIC	Durant	OK	106.11	148.7	106.0	0.11
KNOR	249C3	LIC	Healdton	OK	42.45	245.4	42.0	0.45
KMMY	246C*	LIC	Muskogee	OK	168.99	59.9	165.0	3.99
RDEL	249C3	DEL	Healdton	OK	47.94	239.6	42.0	5.94
KWEYFM	247C1	LIC	Weatherford	OK	206.02	300.9	200.0	6.02
KKEN	246A	LIC	Duncan	OK	85.20	270.4	72.0	13.20
RADD	249A	ADD	Purcell	OK	55.36	329.0	31.0	24.36
RADD	249A	ADD	Purcell	OK	55.36	329.0	31.0	24.36
KMEO	244C	LIC	Flower Mound	TX	125.89	199.1	95.0	30.89
KMEO.C	244C	CP	Flower Mound	TX	125.89	199.1	95.0	30.89
KMODFM	248C*	LIC	Tulsa	OK	205.76	24.2	165.0	40.76
KEGL	246C	LIC N	Fort Worth	TX	213.17	178.2	165.0	48.17
KRZB.C	248C2	CP	Archer City	TX	164.75	244.5	106.0	58.75
ALLO.V	248C1	VAC	Archer City	TX	195.21	239.9	133.0	62.21
RDEL	248C1	DEL	Archer City	TX	195.21	239.9	133.0	62.21
KESSFC	300C3	CP N	Gainesville	TX	85.81	181.7	12.0	73.81

# Davis, OK CH 247A 3.16 mv



© 2000 DeLorme Street Atlas USA © 2000 GDT, Inc. 04/2000

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Scale 1 250,000 (at center)

5 Miles

5 KM

- |                             |                    |
|-----------------------------|--------------------|
| — Local Road                | □ Exit             |
| — Rest Area                 | ○ County Seat      |
| — US Highway                | ● Small Town       |
| — Interstate/Limited Access | ● Park/Reservation |
| — Toll Highway              | ◇ Locale           |
| — Rest Area with facilities | Water              |
| — Major Connector           | River/Canal        |
| — State Route               | Intermittent River |

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**Attachment B**

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Amendment of Section 73.202(b), )  
Table of Allotments, ) MM Docket No. 00-148  
FM Broadcast Stations. ) RM-9939  
(Quanah, Archer City, Converse, Flatonia, ) RM-10198  
Georgetown, Ingram, Keller, Knox City, )  
Lakeway, Lago Vista, Llano, McQueeney, )  
Nolanville, San Antonio, Seymour, Waco and )  
Wellington, Texas, and Ardmore, Durant, )  
Elk City, Healdton, Lawton and Purcell,  
Oklahoma.)

**REPORT AND ORDER**  
(Proceeding Terminated)

**Adopted: May 7, 2003**

**Released: May 8, 2003**

By the Chief, Audio Division:

1. The Audio Division has before it a *Notice of Proposed Rule Making* in the captioned proceeding.<sup>1</sup> Nation Wide Radio Stations filed Comments and Reply Comments. First Broadcasting Company, L.P., Rawhide Radio, L.L.C., Next Media Licensing, Inc., Capstar TX Limited Partnership and Clear Channel Broadcast Licenses, Inc. ("Joint Parties") filed a Counterproposal and Reply Comments. Fritz Broadcasting Co., Inc. and M&M Broadcasters, Ltd. filed Joint Reply Comments. Elgin FM Limited Partnership and Charles Crawford ("Elgin-Crawford") jointly filed Reply Comments and Maurice Salsa filed Reply Comments.<sup>2</sup> For the reasons discussed below, we are dismissing both the initial proposal for Channel 233C3 at Quanah, Texas, and the Counterproposal.

Background

2. At the request of Nation Wide Radio Stations, the *Notice* in this proceeding proposed the allotment of Channel 233C3 to Quanah, Texas.<sup>3</sup> In response to the *Notice*, the Joint Parties filed a Counterproposal involving twenty-two communities in Texas and Oklahoma. In one aspect of this Counterproposal, the Joint Parties propose the substitution of Channel 248C for Channel 248C2 at Durant, Oklahoma, reallocation of Channel 248C to Keller, Texas, and modification of the Station KLAK license to specify operation on Channel 248C at Keller, Texas. In order to accommodate this allotment,

<sup>1</sup> 15 FCC Rcd 15809 (MM Bur. 2000).

<sup>2</sup> In this proceeding, Texas Grace Communications, Elgin FM Limited Partnership, Charles Crawford, Maurice Salsa, M&M Broadcasters, AM&FM Broadcasters and the Joint Parties have filed additional pleadings. In view of our action dismissing the Joint Parties Counterproposal, it will not be necessary to discuss these pleadings in the context of this *Report and Order* terminating this proceeding.

<sup>3</sup> Nation Wide Radio Stations has withdrawn its expression of interest in this allotment. In accordance with Section 1.420(j) of the Rules, Nationwide Radio Stations states that neither it nor any of its principals have been paid or promised any consideration for the withdrawal of its expression of interest in the Quanah allotment.

the Joint Parties propose three channel substitutions. Included among those substitutions was the substitution of Channel 230C1 for Channel 248C1 at Archer City, Texas, and the modification of the Station KRZB permit to specify operation on Channel 230C1. On the basis of our own engineering review, Joint Reply Comments filed by Fritz Broadcasting Co., Inc. and M&M Broadcasters, Ltd., and Reply Comments filed by Maurice Salsa, the proposed transmitter site (33-36-58 and 98-51-42) for the Channel 230C1 allotment at Archer City is short-spaced to a prior-filed application filed by AM & FM Broadcasters, LLC, licensee of Station KICM, Channel 229C2, Krum, Texas, to upgrade to Channel 229C1 (File No. BMPH-20000725AAZ) (the "KICM Class C1 Application").

3. Counterproposals that are in conflict with a previously filed application can be considered if the counterproposal is amended to remove the conflict within 15 days from the date the counterproposal appears on public notice.<sup>4</sup> The Note also requires a counterproponent to show that it could not have known by exercising due diligence of the pending conflicting FM application. The Joint Parties and AM & FM Broadcasters submitted Reply Comments addressing this issue. Under the agreement, AM & FM Broadcasters agrees to file an application to downgrade Station KICM to Channel 229C2 in the event its application is granted and the Counterproposal is adopted. Pursuant to the agreement, the Joint Parties would "compensate" AM & FM Broadcasters for the downgrade of Station KICM. On August 20, 2001, the staff granted the KICM Class C1 Application.

#### Discussion

4. We dismiss the Counterproposal because the proposed Archer City Channel 230C1 allotment is short-spaced to the KICM Class C1 construction permit. The Joint Parties have not shown that they could not have known about the then-conflicting KICM Application. Nor have the Joint Parties sought to amend their Counterproposal to protect the proposed Archer City Channel 230C1 allotment.

5. The Commission does not entertain a short-spaced allotment that is contingent on the grant of another application.<sup>5</sup> This is precisely what the Joint Parties seek. The Archer City allotment is short-spaced to the KICM construction permit and contingent on the staff granting future applications by AM & FM Broadcasters for both a Class C2 construction permit and license. We reject Joint Parties argument that its downgrade proposal complies with the contingent application procedures set forth in Section 73.3517(e) of the Commission's Rules. Section 73.3517(e) permits the simultaneous acceptance of contingent *minor change applications*. It does not authorize the filing of contingent rulemaking petitions. Accordingly, the Counterproposal must be dismissed.

#### Alternative Proposals

6. The Joint Parties filed an alternative twelve-allotment proposal in anticipation of a staff determination that the Channel 230C1 Archer City allotment is impermissibly short-spaced to the KICM permit. We reject this alternative. A counterproposal must conflict with the proposal set forth in the *Notice*.<sup>6</sup> In this instance, none of these proposals conflict with Nation Wide Radio Station's initial proposal for a Channel 233C3 allotment at Quanah. As such, we will not bifurcate the Counterproposal or otherwise consider any of these proposals in the context of this proceeding.<sup>7</sup>

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<sup>4</sup> See Note to Section 73.208 of the Rules; see also *Conflicts Between Applications and Petitions for Rule Making to Amend the FM Table of Allotments*, 8 FCC Rcd 4743 (1993).

<sup>5</sup> See *Oxford and New Albany, Mississippi*, 3 FCC Rcd 615 (MM Bur. 1988), *recon.* 3 FCC Rcd 6626 (MM Bur. 1988); see also *Cut and Shoot, Texas*, 11 FCC Rcd 16383 (MM Bur. 1996).

<sup>6</sup> See *Implementation of BC Docket No. 80-90 to Increase the Availability of FM Broadcast Assignments*, 5 FCC Rcd 931, n. 5 (1990).

<sup>7</sup> See also *Broken Arrow and Bixby, Oklahoma, Coffeyville, Kansas*, 3 FCC Rcd 6507 (MM Bur. 1988).

7 In the event that its Counterproposal can not be favorably entertained, the Joint Parties advance two alternative proposals. The staff no longer entertains alternative proposals set forth in counterproposals.<sup>8</sup> In any event, each of these alternatives fails to comply with our rules and procedures. The first proposal involves the proposal to reallocate Channel 248C to Keller, Texas, and modify the Station KLAQ license to specify operation on Channel 248C at Keller. A Channel 248C allotment at Keller requires the substitution of Channel 230C1 at Archer City, and thus, cannot be considered. The second alternative only proposes the substitution of Channel 247C1 for Channel 248C at Waco, Texas, reallocation of Channel 247C1 to Lakeway, Texas, and modification of the Station KWTX license to specify operation on Channel 247C1 at Lakeway. The Joint Parties also proposed related channel substitutions necessary to accommodate this reallocation. However, none of these proposed channel substitutions conflict with the underlying Channel 233C3 allotment at Quanah, Texas, proposed in the *Notice*.

8. Accordingly, IT IS ORDERED, That the aforementioned proposal filed by Nation Wide Radio Stations for a Channel 233C3 allotment at Quanah, Texas, IS DISMISSED.

9. IT IS FURTHER ORDERED, That the aforementioned Counterproposal filed by the Joint Parties IS DISMISSED.

10 IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

11 For further information concerning this proceeding, contact Robert Hayne, Media Bureau, (202) 418-2177

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>8</sup> See *Winslow, Camp Verde, Mayer and Sun City West, Arizona*, 16 FCC Rcd 9551 (MM Bur 2001)



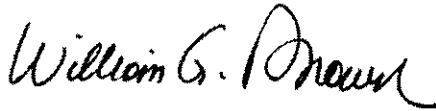
**EXHIBIT 2**  
**(TECHNICAL STATEMENT AND STUDY)**

**TECHNICAL STATEMENT  
Concerning Primary Coverage  
of Elmore City, Oklahoma**

We calculate that there are a total of 2 FM stations and 21 AM stations providing primary service to the community of Elmore City, Oklahoma.

Therefore, with 5 or more aural broadcast services, Elmore City, Oklahoma is adequately served.

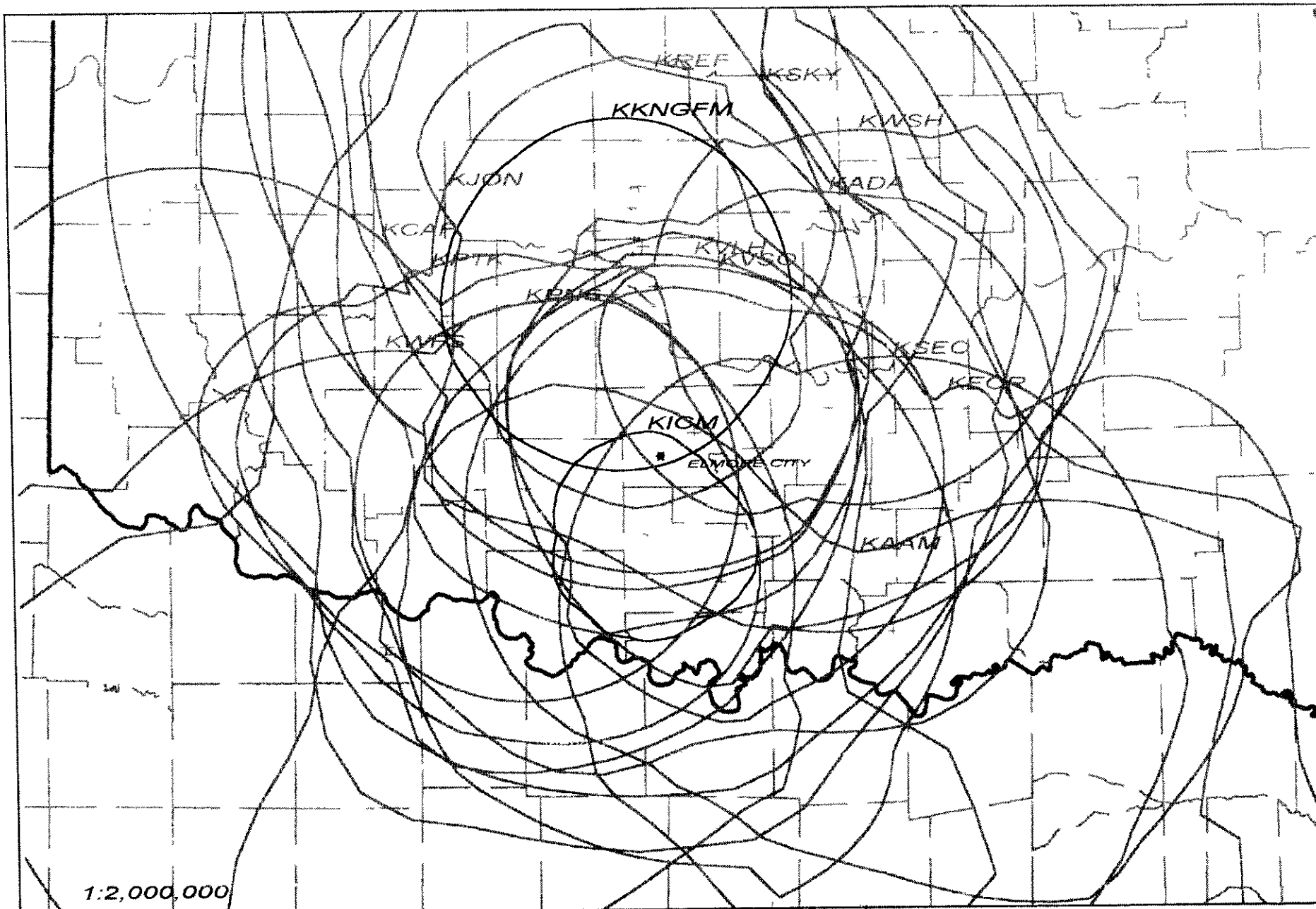
Attached is a map showing all primary services to Elmore City. The map is followed by a tabulated listing of all stations providing primary service to Elmore City.



October 6, 2003

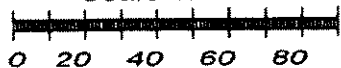
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William G. Brown  
Bromo Communications, Inc.



1:2,000,000

Scale in km



Primary Services to Elmore City, Oklahoma

**BROMO**  
BROADCAST  
TECHNICAL CONSULTANTS  
COMMUNICATIONS

# TABULATION OF PRIMARY SERVICES TO ELMORE CITY, OKLAHOMA

October 2003

## FM Primary Services

<u>Call</u>	<u>Channel/Frequency</u>	<u>City</u>	<u>State</u>
KICM	249C3	Healdton	Oklahoma
KKNG	227C1	Newcastle	Oklahoma

## AM Primary Services

<u>Call</u>	<u>Channel/Frequency</u>	<u>City</u>	<u>State</u>
KAAM	770	Garland	Texas
KADA	1230	Ada	Oklahoma
KCAF	990	Wichita Falls	Texas
KEBC	1340	Oklahoma City	Oklahoma
KEOR	1110	Atoka	Oklahoma
KJON	850	Anadarko	Oklahoma
KOMA	1520	Oklahoma City	Oklahoma
KPNS	1350	Duncan	Oklahoma
KPTK	1380	Lawton	Oklahoma
KQCV	800	Oklahoma City	Oklahoma
KREF	1400	Norman	Oklahoma
KSEO	750	Durant	Oklahoma
KSKY	660	Balch Springs	Texas
KTLR	890	Oklahoma City	Oklahoma
KTOK	1000	Oklahoma City	Oklahoma
KVLH	1470	Pauls Valley	Oklahoma
KVSO	1240	Ardmore	Oklahoma
KVSP	1140	Oklahoma City	Oklahoma
KWFS	1290	Wichita Falls	Texas
KWSH	1260	Wewoka	Oklahoma
WKY	930	Oklahoma City	Oklahoma

**Bromo Communications, Inc.**

Atlanta, Georgia